

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CALIFORNIA GAS TRANSPORT, INC.

and

GENERAL TEAMSTERS (EXCLUDING
MAILERS), STATE OF ARIZONA, LOCAL
104, AN AFFILIATE OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Cases 28-CA-19645
28-CA-19666
28-CA-20014
28-CA-20082
28-CA-20177

Mara-Louise Anzalone, Esq., of Phoenix, Arizona,
for the General Counsel.

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Thomas J. Kennedy, Esq., & *Michael C. Grubbs, Esq.*,
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SUPPLEMENTAL DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. On August 31, 2006, the Board issued its Decision and Order¹ directing, *inter alia*, that Respondent make whole Rogelio Delgadillo, Robert Ryburn, Gonzalo Munoz, Efren Munoz, Alonso Alonso, Ramon Hernandez, Lorenzo Medina, Raul Almaraz, Jose Raul Almaraz, Rosario Gastelum, and Jacinto Hernandez for any loss of earnings or other benefits suffered as a result of the discrimination against them. Thereafter on November 7, 2007, the United States Court of Appeals for the Fifth Circuit issued its Judgment² enforcing the Board's Decision and Order. This case was tried before me in El Paso, Texas on February 10-11, 2009 upon the Amended Compliance Specification³ issued

¹ *California Gas Transport, Inc.*, 347 NLRB 1314 (2006)

² Fifth Circuit No. 06-60871, Unpublished Memorandum filed November 7, 2007.

³ At the hearing Counsel for the General Counsel moved to amend the Amended Compliance Specification by offering revised Appendix A, pages 2, 3, 4, 5, 6, 7 and 8, General Counsel's exhibits 3 and 7, and Backpay Calculation Summary Sheet, General Counsel's exhibit 2 which reflect adjustments to interim earnings for Alonso Alonso, Jacinto Hernandez, Lorenzo Medina, Raul Almaraz, Rosario Gastelum, Ramon. The Motion to amend was granted. After the close of the hearing, in her brief, Counsel for the General Counsel moved to amend the Compliance Specification to reflect more accurate net backpay figures for Gastelum. The motion to amend is granted.

by the Regional Director for Region 28 of the National Labor Relations Board (Board) on December 5, 2008. On December 24, 2008, Respondent filed its answer to the amended Compliance Specification and denied that the gross backpay calculations due any of the discriminatees are correct. Having been unable to reach an agreement with the General Counsel concerning the amount of backpay due to the above named discriminatees, Respondent, Charging Party and the Counsel for the General Counsel entered into a stipulation on February 10, 2009, that provided the parties agreed that the gross backpay for each discriminate set forth in the Amended Compliance Specification was the amount of gross backpay due to the discriminatees. The parties further stipulated that the correct amount of net earnings for Rogelio Delgadillo was \$1070 and for Raul Almaraz was \$6446.76.⁴

The principal issue presented for decision is the correct amount of interim earnings to be offset against gross backpay owed to the discriminates Jacinto Hernandez, Lorenzo Medina, Jose Gonzalo Munoz, Jose Raul Almeraz, Robert Ryburn, Efren Munoz, Alonso Alonso, Ramon Hernandez, and Rosario Gastelum. In its brief, while Respondent appears to contend that the amount of interim earnings contained in the amended Compliance Specification for each of the above discriminatees is incorrect, in it makes no argument with respect to Robert Ryburn or Efren Munoz.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs of the parties, I make the following:

Findings and Conclusions

Nine drivers gave testimony concerning their search for work following their September 13, 2004 terminations.

Jacinto Hernandez

After his discharge from his part time⁵ job with Respondent, Jacinto Hernandez began to contact his friends who were drivers to look for work and submitted applications to several employers as a driver. Hernandez lives in an impoverished area of El Paso, Texas that has neither public transportation nor a phone. His termination left him unable to afford his car. Hernandez, who is over 65 years of age, receives Social security benefits of \$460 per month. It appears that in October 2004, Hernandez first obtained part-time work with Texas LPG hauling gas. Texas LPG told Hernandez that the work would become full-time but despite having filled out applications with other employers, he was offered nothing but part time work until July 2005.

⁴ On March 18, 2009, after the hearing, Counsel for the General Counsel filed a Motion to Correct the Record. On March 24, 2009 Respondent filed its Response to General Counsel's Motion to Correct the Record. Finally on March 27, 2009 the parties filed a Joint Motion to Correct the Record. In the Joint Motion the parties agree that the testimony that begins on page 116 of the transcript is that of Ramon Hernandez and the testimony on page 24 is that of Jacinto Hernandez. The parties further agree that the parties stipulated at the hearing as to the net backpay of Raul Almeraz and that it was Jose Raul Almeraz who testified at the hearing. The transcript will be corrected as reflected in the parties Joint Motion.

⁵ General Counsel's Exh. 1(j), Appendix A reflects that while employed by Respondent, Hernandez worked 82% of the hours of other truck drivers.

Lorenzo Medina

5 The day after he was fired, Medina began his job search at several trucking companies and filled out applications. He called and followed up on his applications on a daily basis thereafter until he was hired in December 2004 by MTI as a full time concrete truck driver. Medina worked for MTI for two months until he got a better paying job with MTS on January 30, 2005. Medina continues with MTS to the present.

Jose Gonzalo Munoz

10 Munoz applied for work within two weeks after he was terminated. Munoz was hired by MTS about six weeks after he was fired and worked for MTS full time for about six to eight months. Thereafter in about April 2005, Munoz bought his own truck and became self employed to the present.

Jose Almeraz

15 Immediately after his termination, Almeraz made application as a driver with at least eight trucking companies over a 10-day period. Three weeks later Southwest Freight Lines offered Almeraz a full time job as a driver. Almeraz was with Southwest Freight until 2006 until it closed when he got a job with Texas LPG in April 2006.

Robert Ryburn

25 A few days after his September 24, 2005 termination, Ryburn called Texas LGP about a job. A week later Ryburn called Coastal and filled out an application. Ryburn was denied work at Coastal due to a bad reference from Respondent which was found by the Board herein to have violated section 8(a)(1) of the Act. Three weeks later Manuel Huerta Trucking hired Ryburn in November 2004. Ryburn worked for Huerta until January 2005 and went to work for BJ Cecil for a year. Ryburn then was hired by Asarco Mining in April 2006 and Khalil Bottling, part time in May 2006. Ryburn lived in Nogales, Arizona at the time of his termination. Nogales is 380 miles from El Paso.

Efren Munoz

35 Three or four days after he was fired Munoz applied at Jobe as a driver. On October 20, 2004, Munoz was hired by MTS as a full time driver and has been employed there to date.

Alonso Alonso

40 As soon as he was fired Alonso began looking for work and filled out applications with at least six trucking companies. After about a month, Alonso was hired as a full-time driver by Robert Barassa who leased his trucks to UPT. Later in 2005, Alonso became an owner-operator and leased his truck to UPT.

Ramon Hernandez

50 One week after his termination, Hernandez applied for work at several other trucking companies, including UPT. One month after his termination, UPT hired Hernandez as a full-time driver. After six months with UPT, Hernandez was fired in April 2005 to an accident on the job and Hernandez was off work for three months due to an injury in this accident for which he

received worker's compensation. In about August 2005 Hernandez became an owner-operator until May 2006. About two weeks later, Hernandez began searching for work as a driver and was not hired after a few months.

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Rosario Gastelum

Gastelum applied for work with several trucking companies seven to ten days after his termination. Between September and December 2004, Gastelum applied for work at least once a week. Gastelum was initially hired as a full time driver in January 2005 by Far West.

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Gastelum was employed by Far West for five to six months and with two other companies as a full-time driver in 2005. From 2006 to the present, Gastelum has been with five or six other trucking companies and was forced to seek new employment because the companies went out of business. Gastelum, who resides in Mexico, was extremely difficult for the Region to communicate with and had, therefore, not provided his tax returns at the time the Compliance Specification issued. For this reason, the Compliance Specification included interim earnings for Gastelum that were based on an average of the remaining drivers' interim earnings.

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Gastelum appeared at hearing however, and was able to procure his tax records from the Internal Revenue Service office on the same day. These records are contained in Respondent's Exhibit 9. Based on these records, the Region has been able to determine a more accurate net backpay figure for Gastelum, which is set forth below:

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Year	Qtr.	Gross Backpay	Interim Earnings	Interim Expenses	Net Interim Earnings	Net Backpay	Medical / Other
2004	3rd	1,363.41	1,215.56	0.00	1,215.56	147.86	0.00
2004	4th	9,879.59	6,506.81	0.00	6,506.81	3,372.78	0.00
2005	1st	9,663.00	6,729.24	0.00	6,729.24	2,933.76	0.00
2005	2nd	9,663.00	6,804.85	0.00	6,804.85	2,858.15	0.00
2005	3rd	9,663.00	6,880.46	0.00	6,880.46	2,782.54	0.00
2005	4th	9,663.00	6,880.46	0.00	6,880.46	2,782.54	0.00
2006	1st	8,934.60	4,595.34	0.00	4,595.34	4,339.26	0.00
2006	2nd	8,934.60	4,646.97	0.00	4,646.97	4,287.63	0.00
2006	3rd	1,363.00	1,187.56	0.00	1,187.56	175.44	0.00
Totals:		69,127.18	45,447.23			23,679.95	0.00

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Respondent's Challenge of Interim Earnings

As part of its challenge to nine of the employees' interim earnings, Respondent offered the testimony of Kathy Mundy (Mundy), a vocational Expert with a Masters Degree in Vocational Rehabilitation Counseling. Most of Mundy's expert testimony has been given before the Social Security Administration and in Worker's Compensation hearings where she is called upon to estimate the total number of jobs that may exist in a particular region to determine if an individual meets the definition of disabled. She admitted that none of her research involved the Nogales, Arizona area where discriminatee Ryburn lives. Mundy found that there were significant truck driver positions during 2004-2006 in the El Paso, Texas area and that a driver should have been able to find employment within two weeks. In reaching her conclusions, Mundy considered the classified ads in the English language El Paso, Texas daily newspaper

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she sampled once a month from September 2004 to August 2006, the Bureau of Labor Statistics publication for truck driving positions in the El Paso area, the 8% unemployment figure for 2004-2006 in El Paso, Texas, her discussions with an unnamed sales manager from one trucking company and information from unspecified persons familiar with the over-the-road trucking business. According to Mundy, any of the discriminatees should have been able to find a job within two weeks of commencing a job search. Mundy did not consider the discriminatees' work history, qualifications, or licenses.

Respondent also proffered the testimony of CPA Keven Jensen for the purportedly for purpose of explaining that the Board's formula for determining net backpay for the self-employed discriminatees was inappropriate. Respondent argues that the Board used gross income to determine gross backpay and therefore should have used gross income, i.e. gross receipts without expenses, to determine interim earnings, for the self-employed discriminatees. Jensen's testimony would have established that gross interim earnings should have been compared to gross backpay. Contrary to Respondent's assertion in its post hearing brief, as set forth in Respondent's offer of proof, Jensen was never offered as a witness for the purpose of explaining income tax deductions the discriminatees may have taken or to explain Internal Revenue Code sections. I rejected this testimony on the ground that the Board has long held that an appropriate measure of interim earnings for the self-employed is their net earnings, i.e. profits. *Basin Frozen Foods, Inc.*, 320 NLRB 1072, 1075 (1996); *Cliffstar Transportation Co., Inc.*, 311 NLRB 152, 169 (1993); *Brown Co.*, 305 NLRB 62 (1991); and *F.E. Hazard, LTD.*, 297 NLRB 790 (1990). Jensen's testimony was not competent on this issue. Respondent was not precluded from questioning the accuracy of income tax returns of the self-employed discriminatees nor of offering Jensen's testimony as a CPA concerning the accuracy of the tax returns.

Analysis

Applicable Legal Principals

It is well settled that the finding of an unfair labor practice is presumptive proof that some backpay is owed, (*N.L.R.B. v. Mastro Plastics Corporation and French American Reeds Manufacturing Company*, 354 F.2d 170, 178 (2d Cir. 1965), cert. denied 384 U.S. 972 (1966), and that in a backpay proceeding the sole burden on the General Counsel is to show the gross amounts of backpay due--the amount the employees would have received but for the employer's illegal conduct. (*Virginia Electric and Power Company v. N.L.R.B.*, 319 U.S. 533, 544 (1943). Once that has been established, "the burden is upon the employer to establish facts which would ... mitigate that liability." *N.L.R.B. v. Brown & Root, Inc., et al.*, 311 F.2d 447, 454 (8th Cir. 1963). It is further well established that any formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in the circumstances. *International Association of Bridge, Structural and Reinforced Iron Workers Union, Local 378, AFL-CIO (Judson Steel Corporation)*, 227 NLRB 692 (1977); *N.L.R.B. v. Brown & Root, Inc., supra* at 452; *East Texas Steel and Castings company, Inc.*, 116 NLRB 1336 (1956); *Avon Convalescent Hospital*, 219 NLRB 1210, 1213 (1975).

The Board has long recognized the value of utilizing social security records and income tax returns in determining interim income, and has found that "poor record keeping, uncertainty as to memory, and perhaps exaggeration" do not automatically disqualify an employee from receiving backpay. *Patrick F. Izzi, d/b/a Pat Izzi Trucking Company*, 162 NLRB 242, 245 (1966).

Interim Earnings-Failure to Mitigate

In addition to Respondent's rejected argument that the Board used an inappropriate formula for determining interim earnings for self-employed discriminatees, Respondent contends that the discriminatees failed to mitigate their losses by failing to make a reasonable search for work, by voluntarily leaving work for lower paying jobs, and by making themselves unavailable for work.

Recently, in *St. George Warehouse*, 351 NLRB 961 (2007) a sharply divided Board majority reversed over 40 years of Board precedent dealing with the burden of proof with respect to mitigation of losses by discriminatees in backpay cases. Ignoring the availability of subpoenas to Respondent's who wish to challenge the amount of interim earnings reported in the General Counsel's Backpay Specification, the Board took the novel approach of requiring General Counsel to produce witnesses or documents to establish the search efforts of unlawfully terminated employees if Respondent can show that there were substantially equivalent jobs available in the relevant geographical area.

In apparent conflict with *Essex Valley Visiting Nurses Assn.*, 352 NLRB 427, 438, (2008), where the Board held that classified ads and expert testimony, "is not sufficient to prove either that positions were available or that the nurses would have been successful in obtaining one." and its own recent conclusion in *Grosvenor Resort*, 350 NLRB 1197 (2007) that vocational expert testimony, "is too speculative to meet the Respondent's burden of establishing that the backpay of certain discriminatees should be reduced.", under the *St. George Warehouse* standard, Respondent now can satisfy its burden to show that there are substantially equivalent jobs available in the relevant geographical area by calling a vocational expert as a witness to testify that there are a number of comparable jobs in the geographical area based on BLS statistics and classified ads. However there is no requirement that the vocational expert interview the discriminatees to determine if the generic jobs are available for the discriminatee or if they would have likely been hired for specific jobs, contrary to established Board precedent. *E & L Plastics Corp.*, 314 NLRB 1056, 1058 (1994); *Delta Data Systems Corp.*, 293 NLRB 736, 737 (1989).

As in *St. George Warehouse*, *supra*, here Respondent has offered a vocational expert who testified that in the El Paso, Texas region there were significant numbers of truck driving jobs and that a driver should have found a job within two weeks. Contrary to Counsel for the General Counsel's argument that Respondent's vocational expert should not be credited given the speculative nature of her testimony, the absence of any testimony that the jobs she cited were available or that the discriminatees would have qualified for any of those jobs and notwithstanding the Board's holdings in *Essex Valley Visiting Nurses Assn*, *supra* and *Grosvenor Resort*, *supra*., given the Board's holding in *St. George Warehouse*, *supra*, I am constrained to find that Respondent has satisfied its burden of showing that there were significant jobs in the El Paso, Texas area and that the burden has shifted to General Counsel to show that each of the discriminates who lived in the El Paso area made a reasonable job search.⁶

Further, in *Grosvenor Resort*, 350 NLRB 1197 (2007), the Board concluded that a discriminatee must commence his search for interim employment within 14 days of his unlawful termination or face a tolling of backpay.

⁶ Respondent has failed to meet its burden of showing that there were significant numbers of jobs in the Nogales, Arizona area where discriminatee Ryburn lived.

Concerning the voluntary quitting of interim employment, the Board holds that when a discriminatee voluntarily quits interim employment, the burden shifts from the Respondent to the Government to show that the decision to quit was reasonable. *Cable Car Advertisers*, 336 NLRB 927, 931 (2001). Further a termination from employment does not constitute willful loss of employment. There must be evidence of deliberate or gross misconduct by the discriminatee. *Ryder System*, 302 NLRB User 608, 610 (1991). It is also clear that being unable for work due to workers compensation injuries tolls backpay during the period of disability. *City Disposal Systems*, 290 NLRB 413 fn. 2 (1988). It is likewise the law that an employee who for interim employment undertakes self employment does not result in the equivalent of a willful loss of earnings, but self employment is to be treated as other interim employment. *Cliffstar Transportation Co., Inc.*, 311 NLRB 152, 169 (1993); *Heinrich Motors*, 166 NLRB 783 (1967).

I turn now to Respondent's individual contentions with respect to why backpay should be reduced for its employees.

Jacinto Hernandez

Respondent argues that Hernandez failed to make a reasonable search for full time employment. When employed by Respondent, Hernandez worked about 82% of the hours of other discriminatees. The record reflects that Hernandez termination caused him to lose his car and that he walked a 1½ miles to and from his interim employment despite the fact that Hernandez is over 65 years old and receives Social Security benefits.

Under these circumstances, I find that Hernandez engaged in a reasonable job search immediately after his unlawful termination and secured employment in October 2004 that was substantially equivalent to his work with Respondent given the fact that he worked part time for Respondent, given the limitations placed on his job search as a result of losing his car due to his termination, together with his age and the fact that he received Social Security payments. *Cassis Management Co.*, 336 NLRB 961, 968 (2001). I find that Hernandez began his job search immediately after his termination by Respondent and that his termination was the proximate cause of his loss of transportation, mitigating the fact that he did not find full time employment until May 2005 and mitigating and truncating his job search after his termination. *Grosvenor Resort, supra*.

Lorenzo Medina

Respondent contends that Medina did not engage in a reasonable job search and made no applications for interim employment until November 2004. Contrary to Respondent's assertion, Medina began to search for work the day after he was fired, satisfying the two week requirement of *Grosvenor Resort, supra*. Moreover, Medina made daily calls to employers searching for work until he was hired in December 2004, satisfying the *St. George Warehouse, supra*, requirement.

Jose Gonzalo Munoz

Respondent contends that Munoz did not make a reasonable job search, that he voluntarily quit interim employment to seek self employment and that his interim earnings should be reduced as a result of his failure to promptly seek work and by voluntarily quitting his employment.

Again contrary to Respondent's assertion, Munoz began his job search immediately after

he was fired. About two weeks after his termination MTS offered him a job and he began to submit the necessary paperwork. It took about six weeks for MTS to put Munoz to work. Since MTS offered him a job, Munoz stopped looking for other work. Unlike the facts in *Grosvenor Resort, supra*, here Munoz was offered a job within two weeks of his termination, excusing any further job search efforts.

It is likewise the law that an employee who for interim employment undertakes self employment does not result in the equivalent of a willful loss of earnings, but self employment is to be treated as other interim employment. *Cliffstar Transportation Co., Inc.*, 311 NLRB 152, 169 (1993); *Heinrich Motors*, 166 NLRB 783 (1967). Thus, unlike the situation in *Cable Car Advertisers*, 336 NLRB 927, 931 (2001), Munoz' seeking self employment is not the equivalent of voluntarily quitting, which would trigger the General Counsel's obligation to show that the quit was reasonable.

Respondent's argument that the appropriate measure of interim earnings for a self-employed person should be gross income is of no avail as discussed above. Profits, i.e. gross revenue minus expenses, are the correct measure of interim earnings for the self employed. *Cliffstar Transportation Co. Inc.*, 311 NLRB 152, 169 (1993).

Jose Almeraz

Respondent contends that Almeraz' had greater interim earnings than gross backpay and that he should not be credited⁷ with having made a reasonable job search. I find that Almeraz made a reasonable job search within days of his termination by searching out and making application with at least eight employers over a 10-day period and securing employment in three weeks. The burden remains with Respondent to show that Almeraz failed to mitigate his loss of earning and I find that Respondent has failed to show any evidence that the calculations offered by General Counsel in the Amended Backpay Specification are not correct with respect to Almeraz' quarterly calculations of interim employment.

Robert Ryburn

Respondent makes no argument in its brief concerning Ryburn. I find that Respondent has failed to satisfy its burden of showing that there were substantially equivalent jobs in the Nogales, Arizona area. Thus, the burden does not shift to General Counsel to establish that Ryburn made a good faith effort to find work. Respondent has failed to offer proof that the interim earnings set forth in the Amended Backpay Specification are incorrect.

Efren Munoz

Respondent makes no argument in its brief concerning Efren Munoz. While Respondent has satisfied its burden of showing that there were substantially equivalent jobs in the El Paso, Texas, area, General Counsel has established that three or four days after he was fired Munoz

⁷ Respondent contends that Almeraz was less than truthful concerning payments he received from interim employment with Texas LPG. Almeraz testified truthfully that he received a salary from Texas LPG but denied receiving cash per diem until shown a document to refresh his recollection. At that time Almeraz admitted receiving \$45 per day for expenses when entering Mexico. I am not convinced that Almeraz was untruthful when asked about "per diem" rather than simply not understanding that he was being asked about receiving payment for his expenses.

applied for work at Jobe as a driver and at MTS. On October 20, 2004, Munoz was hired by MTS as a full time driver and has been employed there to date. I find that Munoz made a good faith effort to find work. Respondent has failed to offer proof that the interim earnings set forth in the Amended Backpay Specification are incorrect.

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Alonso Alonso

Respondent takes the position that since Alonso sought interim employment as a self-employed driver rather than continue as an employee of Robert Barassa, this constitutes a failure to mitigate lost earnings. There is no dispute that Alonso made a good faith search for employment immediately after his termination and secured employment with Barassa. Later Alonso became an owner operator, leasing his truck to UPT in 2005.

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As with Jose Munoz, Alonso did not voluntarily quit his employment but sought out self employment. An employee who undertakes self employment does not result in the equivalent of a willful loss of earnings, but such self employment is to be treated as other interim employment. *Cliffstar Transportation Co., Inc.*, 311 NLRB 152, 169 (1993); *Heinrich Motors*, 166 NLRB 783 (1967). Thus, unlike the situation in *Cable Car Advertisers*, 336 NLRB 927, 931 (2001), seeking self employment is not the equivalent of voluntarily quitting, which would trigger the General Counsel's obligation to show that the quit was reasonable.

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Further, Respondent's argument that only gross receipts from self employment should be considered for interim earnings is rejected. *Cliffstar Transportation Co., Inc.*, *supra*.

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Ramon Hernandez

Respondent argues that Hernandez' backpay should be reduced since he was terminated from his employer UPT in April 2005 for a work related truck accident that constitutes willful or gross misconduct, that his backpay should be tolled while he received worker's comp benefits for three to four months and that Hernandez made an improper deduction from his Federal Income Tax return for 2005 increasing his income by \$10,500.

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There is no evidence concerning the circumstances of the truck accident in April 2005 that led to Hernandez' termination from UPT. Respondent must show that a termination from employment was for deliberate or gross misconduct by the discriminatee. *Ryder System*, 302 NLRB 608, 610 (1991). Respondent has failed to show that the accident for which Hernandez was terminated was the result of deliberate or gross misconduct. Thus, Hernandez' backpay will not be tolled following his termination in April 2005. However, the Board has held that being unable to work due to workers compensation injuries tolls backpay during the period of disability. *City Disposal Systems*, 290 NLRB 413 fn. 2 (1988). Thus for the period from April 1, 2005 to July 1, 2005, the second quarter of 2005, backpay will be tolled.

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As to the alleged improper deduction in 2005, Hernandez 2005 Federal Income Tax return⁸ reflects income of \$15,499. The schedule C form reflects no income but \$10,500 in business expenses for Hernandez' trucking company for fuel costs. The Schedule F form shows income of \$17,841 for Hernandez' trucking company which is also shown on the 1040 form at line 17. I find nothing improper about the deduction for expenses claimed by Hernandez.

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⁸ Respondent's Exh. 8.

Rosario Gastelum

Respondent claims that Gastelum did not make a proper job search and that he voluntarily quit interim employment, however the record reflects that Gastelum applied for work with several trucking companies seven to ten days after his termination and between September and December 2004, Gastelum applied for work at least once a week. Gastelum was initially hired as a full time driver in January 2005 by Far West. This constitutes a good faith effort to mitigate damages under *Grosvenor Resort*.

Gastelum quit his first job after a few months and immediately secured another job with better pay. There is no evidence that Gastelum was out of work more than a week or two between jobs and the reason for working for so many employers was because they went out of business rather than because Gastelum voluntarily terminated his employment.

General Counsel recalculated Gastelum's interim earnings based upon Federal Income Tax returns Gastelum provided at the hearing. Respondent's contention that all of Gastelum's 2006 earnings should be offset against gross backpay for the first and second quarter and the partial third quarter of 2006 is simply not supported by the law.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:⁹

⁹ In the event no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusion, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

SUPPLEMENTAL ORDER

IT IS HEREBY ORDERED that Respondent, California Gas Transport, Inc., forthwith pay to each of the following persons backpay in the amounts set opposite their name, plus interest computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), as required by the Board's Order of August 31, 2006:

10	Jose Raul Almaraz	\$6,026.54
	Raul Almaraz	\$6,446.76
	Alonso Alonso	\$38,282.24
	Rogelio Delgadillo	\$1,070.00
	Rosario Gastelum	\$23,679.95
15	Jacinto Hernandez	\$21,546.56
	Ramon Hernandez	\$26,288.94
	Lorenzo Medina	\$13,454.08
	Efren Munoz	\$10,769.32
	Gonzalo Munoz	\$52,582.77
20	Robert Ryburn	\$12,565.64
	TOTAL NET BACKPAY	\$212,712.28

25 Dated, Washington, D.C., April 23, 2009.

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John J McCarrick
Administrative Law Judge